

(H. B. 1172)  
(Conference)

**(No. 46-2013)**

(Approved June 30, 2013)

## **AN ACT**

To amend Sections 3020.10, 3020.11, 3020.12, 4010.01, 4041.02, and 4042.03 of Act No. 1-2011, better known as the “Internal Revenue Code for a New Puerto Rico,” in order to provide all that pertains to information required, time to pay, and other requirements regarding the use tax; provide for a special appropriation for oversight; and for other purposes.

### **STATEMENT OF MOTIVES**

The delicate nature of the fiscal situation that we are currently facing cannot be overlooked. Increasing revenues and reducing tax evasion have become serious challenges for the government, because the government’s obligations largely depend on them. The Internal Revenue Code for a New Puerto Rico, Act No. 1-2011, establishes a legal mechanism for the collection of the Sales and Use Tax (SUT). This sales tax entails a tax on use.

The use tax is imposed on the use, consumption, or storage of personal property. Although it has not drawn public attention, the use tax is as important as the sales tax. In both instances, the taxpayer is required to file a return and issue a payment within ten (10) days after the transaction. In cases of imported goods for use purposes, the internal revenue agents furnish a document with the required information for the filing of the return. However, the actual filing of the return and the payment of the tax is left to the good faith of the person concerned.

This renders the oversight of the SUT collected on account of goods for use much more challenging, since the payment of said tax is not shown on the retail sales receipt of the taxpayer. This situation has taken its toll on Puerto Rico's Treasury, because the use tax collected is not being remitted to the State.

The purpose of this legislation is to address tax loopholes in the Act by providing that the use tax be paid upon the filing of the appropriate excise tax declaration. As of the approval of this Act, any person who purchases or imports goods for use shall pay the corresponding tax at the time of the import thereof.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Section 3020.10 is hereby amended to read as follows:

“Section 3020.10.- Declaration of Excise Tax and Use Tax and Monthly Excise Tax Return.-

(a) Every importer shall file a detailed excise tax and use tax declaration on all taxable goods or items that have been introduced from abroad. The declaration shall be filed on the deadline for the payment of the corresponding excise taxes or the applicable use tax. The declaration shall contain the information on goods subject to taxation under this Code as prescribed by regulations, and shall be filed in the form and manner set forth by the Secretary.

(1) Exceptions.-

(A) bonded dealers introducing vehicles, vessels, and heavy equipment shall file the declaration stated in subsection (a) not later than ten (10) days after the date on which they take possession of the vehicles, vessels, and heavy equipment; and

(B) in the case of merchandise introduced by mail and air courier, the declaration on goods subject to taxation under this Subtitle shall be filed not later than the fifth (5<sup>th</sup>) business day following the date on which possession of the merchandise is taken; and

(C) merchants introducing taxable items subject to the use tax established in Subtitle D of this Code and who have posted bond in the form and manner prescribed by the Secretary through regulations, shall include the information on such items in the monthly return required under Section 4041.02 of this Code.

(b) Every bonded importer or manufacturer of goods subject to taxation under this Subtitle shall file a Monthly Excise Tax Return not later than the tenth (10<sup>th</sup>) day of the month following the date of introduction or manufacture. Said return shall be filed even if no taxable transactions have occurred for the covered period. The Monthly Excise Tax Return shall contain the information on goods subject to taxation under this Subtitle prescribed by regulations and shall be filed in the form and manner set forth by the Secretary.

(c) The Secretary may request through regulations, circular letter, information bulletin, or administrative determination of a general nature that the declarations required by this Section be filed electronically.”

Section 2.- Section 3020.11 is hereby amended to read as follows:

“Section 3020.11.- Goods Introduced in Freight Containers.-

(a) Any person who imports goods subject to taxation or taxable items into Puerto Rico using freight containers to transfer them from the port to their warehouses, stores, or final destination shall file with the Secretary an excise tax and use tax declaration on all taxable goods or items transported in freight containers and the bill of lading corresponding to the taxable goods or items contained therein prior to removing the container from the custody of the carrier.

(b) The excise tax and use tax declaration and the bill of lading shall include all the information required by the Secretary through regulations. Said documents may be filed electronically in accordance with the mechanisms provided by the Secretary.

(c) If the taxpayer does not have the bill of lading available at that time, he shall submit the corresponding commercial invoices to the Secretary. If the taxpayer does not have said invoices available or refuses to submit them, he shall be prevented from taking possession of the taxable goods or items.

(d) The provisions of this Section shall not release the importer from complying with the provisions of this Subtitle regarding the determination of the taxpayer and the time to pay or from his obligation to submit the commercial invoices to the Secretary when the tax is paid.

(e) In the case of taxable items or perishable goods introduced from abroad using freight containers, the Secretary shall establish adequate administrative mechanisms to allow the importer to promptly take possession thereof.

(f) Once the taxpayer, consignee, or carrier has been authorized to move the container from the premises of the carrier company, whether directly or through his authorized representative, he shall be liable and shall be guilty of a felony, as of that moment, for any rupture to the binding, latch, padlock, or seal of the container, if said rupture was not made in the presence of a treasury official of the Department or by express authorization through an official document from the Secretary. The Secretary, however, shall not prevent nor delay the removal process of merchandise if the prepayment of taxes is necessary.”

Section 3.- Section 3020.12 is hereby amended to read as follows:

“Section 3020.12.- Duties of Port Owners, Lessees, and Administrators.-

(a) No owner, lessee, or administrator of any port who has goods and freight containers subject to excise taxes and use taxes in his custody shall deliver them to the consignee, nor to the person that properly claims them, unless they furnish a certification issued by the Secretary authorizing such delivery.

(b) When, pursuant to Act No. 15 of May 9, 1941, as amended, and the regulations thereunder, the owner, lessee, or administrator of any port transfers the cargo to any depot or warehouse, the owner of the warehouse depot shall not deliver the taxable goods or items or freight containers unless the appropriate certification issued therefor by the Secretary has been previously obtained. If such owner, lessee, or administrator sells the goods because they have not been claimed, he shall pay the Secretary the excise taxes or the Use Taxes, plus the surcharges and interest encumbering said goods up to the time of payment.”

Section 4.- Paragraph (rr) of Section 4010.01 is hereby amended to read as follows:

“Section 4010.01.- General Definitions.-

(a) ...

...

(rr) Use.- Includes the exercise of any right or power over a taxable item incidental to the ownership thereof, or interest thereon, including the use, storage, or consumption of any tangible promotional goods imported into Puerto Rico. Provided, that, in the case of taxable items introduced into Puerto Rico from abroad, it shall be understood that a person has exercised his right or power over such taxable item, incidental to the ownership thereof or interest thereon, from the date of introduction into, or arrival in, Puerto Rico. The term ‘use’ shall not include:

(1) When the taxable item is subsequently the object of commerce in the ordinary course of business in Puerto Rico;

(2) the use of taxable items that constitute normal baggage and clothing of the tourists and visitors who arrive in Puerto Rico;

(3) the use of taxable items whose added value does not exceed five hundred dollars (\$500) and that are introduced by residents of Puerto Rico arriving in Puerto Rico from abroad; and

(4) the use of taxable items temporarily introduced into Puerto Rico that are directly related to film production, construction, trade shows.”

Section 5.- Section 4041.02 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“(a) ...

(b) Any person who has purchased taxable items subject to the use tax, except for taxable items covered by subsection (c) of this Section, shall file a Monthly Sales and Use Tax Return and shall remit the tax to the Secretary not later than the tenth (10<sup>th</sup>) day of the month following the month in which the transaction subject to taxation was carried out in the forms prepared and supplied by the Secretary.

(c) Any person who imports into Puerto Rico taxable items subject to the use tax shall file a declaration pursuant to Section 3020.10 of this Code. Said declaration shall be filed on the deadline for the corresponding tax payment. The Secretary may prescribe the form and manner in which taxpayers, holding a merchant registration certificate, may post a bond for, or pay the corresponding use tax for the taxable items imported into Puerto Rico. If a person is unable to furnish evidence of being a reseller or holding an exemption, it shall be presumed that all items imported are subject to the use tax and shall pay such use tax.

(d) ...

(e) ...

(f) ...

(g) ...

(h) ...”

Section 6.- A new subsection (c) is hereby added to Section 4042.03 of Act No. 1-2011 to read as follows:

“Section 4042.03.- Time to Remit the Sales and Use Tax.-

(a) ...

(b) ...

(c) Electronic deposits or those in excess of twelve thousand dollars (\$12,000). – Merchants whose deposits of the tax imposed under this part for the preceding taxable year exceed twelve thousand dollars (\$12,000), and those who are required by the Secretary, through regulations, to make their tax payments via electronic transfer, shall remit the payment not later than the tenth (10<sup>th</sup>) day of the month following the calendar month in which the transactions subject to taxation were carried out, or in any other date or manner established through regulations, circular letters, or administrative determinations promulgated by the Secretary. Any change in the date or manner of payment of the tax shall be notified within at least ninety (90) days in advance.

(d) The deadline to remit the tax on taxable items subject to use tax imported into Puerto Rico shall be that provided in subsection (c) of Section 4041.02(b).”

Section 7.- Special Appropriation for Oversight.-

It is hereby provided that, from the revenues of the Sales and Use Tax (SUT) covered into the General Fund for a specific fiscal year, ten percent (10%) of the amount that exceeds the estimated revenues contemplated in the budget of said fiscal year shall be allocated to a special account of the Department of the Treasury, separate from other expenses of the latter, in order to be used to upgrade and digitalize systems and equipment, as well as for the training and appointment of technical and field personnel of said department in charge of the oversight, including, but not limited to, the Sales and Use Tax (SUT), as well as other

components that the Secretary deems pertinent and necessary to address issues involving revenue collection and tax evasion. None of these provisions shall contravene the agreements executed by the Puerto Rico Sales Tax Financing Corporation (COFINA, Spanish acronym).

Section 8.- Effectiveness. This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 46-2013 (H. B. 1172) (Conference)** of the **1st Regular Session** of the **17<sup>th</sup> Legislative Assembly of Puerto Rico**:

**AN ACT** to amend Sections 3020.10, 3020.11, 3020.12, 4010.01, 4041.02, and 4042.03 of Act No. 1-2011, better known as the “Internal Revenue Code for a New Puerto Rico,” in order to provide all that pertains to information required, time to pay, and other requirements regarding the use tax; provide for a special appropriation for oversight; and for other purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 14<sup>th</sup> day of September, 2017.

Orlando Pagán-Ramírez  
Acting Director